STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

MCI WorldCom Communications, Inc.	:	
	:	
vs.	:	Docket No. 01-0412
	:	
Illinois Bell Telephone Company, d/b/a Ameritech Illinois	:	
	:	
Complaint pursuant to Section 13-514 and 13-515 and other sections of the Illinois Public Utilities Act	:	

RESPONSE OF MCI WORLDCOM TO MOTION TO DISMISS

MCI WorldCom Communications, Inc., ("MCI WorldCom"), formerly known as MCI Telecommunications Corporation, by its attorney, hereby files its response to the Motion to Dismiss ("Motion") filed by Illinois Bell Telephone Company d/b/a Ameritech Illinois and/or SBC Communications (referred to as "Ameritech Illinois" or "Ameritech"), and in support, MCI WorldCom states as follows:

INTRODUCTION

MCI WorldCom has filed a complaint showing that Ameritech's implementation of its PIC Protection program is presently violating numerous provisions of the Illinois Public Utilities Act and is preventing several hundred thousand Illinois consumers from selecting their preferred intraMSA and interMSA service provider. This is not the first complaint brought by MCI WorldCom against Ameritech over its unlawful implementation its PIC Protection program. As set forth in the present complaint, MCI WorldCom has brought two prior complaints against Ameritech relating to its PIC Protection program and this Commission has ruled against Ameritech in both cases.

Ameritech bases its motion to dismiss largely on the theory that nothing in federal or state law specifically mandates it to implement MCI WorldCom's Electronic Authorization ("EA") proposal. This is simply an attempt on the part of Ameritech to circumvent the real basis for MCI WorldCom's complaint. MCI WorldCom is seeking relief from this Commission primarily because, as currently implemented, Ameritech's PIC Protection program violates Illinois law in several ways. Moreover, Ameritech's refusal to discuss, test, and implement the legally cognizable EA method is a key aspect of these violations. Also, as shown below, the EA proposal is consistent with federal law and allows Ameritech the opportunity to verify customer information and customer intent. Additionally, the Illinois Commission is both empowered and required to rule on whether the EA proposal is appropriate and must proceed with this complaint case instead of a rulemaking proceeding.

PERTINENT BACKGROUND

Ameritech's Motion to a large extent ignores or significantly misinterprets two prior complaint cases before the Commission related to its PIC Protection program. The Motion also ignores the factual allegations in MCI WorldCom's complaint which show the anticompetitive and discriminatory manner in which Ameritech is presently utilizing PIC Protection resulting in a substantial number of Illinois consumers with PIC Protection being denied their carrier of choice. This section of MCI WorldCom's response reviews that pertinent background which is also set forth in the complaint.

As set forth in paragraphs 7 through 10 of the complaint, the 1996 complaints in Docket Nos. 96-0075 and 96-0084 were consolidated and that proceeding hereinafter is referred to as the "*PIC Protection Marketing Order*" case (1996 Ill. PUC Lexis 205). On April 3, 1996, the Commission issued its order in the *PIC Protection Marketing Order* case, finding that Ameritech Illinois' December 1995 bill insert relating to PIC Protection was: 1) misleading because it failed to inform customers clearly that PIC protection would apply to all of their telecommunications services; and 2) discriminatory and anti-competitive in that it established an unfair and unreasonable barriers to IXCs' ability to compete in the intraMSA market in Illinois in violation

of Sections 9-241 and 13-505.2 of the PUA, 220 ILCS 5/9-241 and 5/13-505.2. *PIC Protection Marketing Order*, p. 10. The *PIC Protection Marketing Order* also mandated that Ameritech Illinois should: 1) discontinue applying PIC protection to intraMSA services until October 7, 1996, or until an end user has selected an intraMSA service provider; 2) send to customers a bill insert educating customers about PIC protection; 3) allow three-way conference calls between Ameritech Illinois, an IXC and a customer, with the customer's consent, for the purpose of verifying PIC changes for the customer's intraMSA carrier; and 4) not attempt to retain the customer's account during these three-way calls. *PIC Protection Marketing Order*, pp. 10-11.

The Commission's *PIC Protection Marketing Order* was especially concerned about the potential for additional anti-competitive behavior by Ameritech Illinois through retention marketing. More specifically, the Commission stated: "During telephone calls for the purpose of changing the customer's intraMSA PIC to another carrier, Respondent [Ameritech Illinois] should not attempt to retain the customer's account during the process." *PIC Protection Marketing Order*, p. 9. In other words, the purpose of the three-way call was solely to allow the customer to provide authorization to Ameritech Illinois to change the customer's PIC. The Commission also cautioned Ameritech Illinois against revealing proprietary or confidential information during such calls. *Id.*

Contrary to the statements in Ameritech's Motion at page 1, three-way calling was not ordered at "MCI's behest" in the *PIC Protection Marketing Order*. The Commission's order concludes that the three-way calling proposal which it adopted was "Respondent's proposal". (*PIC Protection Marketing Order*, page 9). Ameritech was the Respondent in that case. (*PIC Protection Marketing Order*, page 1).[1]

[1] The review of the record in that case will show that the issue of three-way calls was discussed by AT&T's witness who noted that Ameritech's service representatives were insisting that AT&T's representative drop off the call. In briefs, the Attorney General proposed that three-way calls be used to lift PIC freezes, but that representatives of the interexchange carrier be permitted to remain on the call with the customer. Notwithstanding the Commission's conclusion that three-way calls were ordered at Ameritech's behest, it appears that Ameritech opposed this requirement. MCI WorldCom did not endorse three way calls in that case.

Ameritech's misinterpretation of the Commission's order is nothing new, because shortly thereafter Ameritech began to violate the order by using three-way calls to try to dissuade customers from leaving Ameritech Illinois' intraMSA service and by using the calls as an opportunity to market other products and services. On October 27, 1997 MCI WorldCom brought a complaint against Ameritech in Docket No. 97-0540 (1997 Ill. PUC Lexis 914), hereinafter referred to as the "*Three-Way Calling* " case.

The Commission in the *Three-Way Calling* case issued its order on December 17, 1997 and made the following findings and conclusions:

(A) Under the *PIC Protection Marketing Order*, Ameritech was prohibited from using three-way calls to retain customers. *(PIC Protection Marketing Order*, p. 11) Ameritech representatives inappropriately marketed services during three-way calls. The instructions which Ameritech gave to its service representatives ". . . represented a knowing use of three-way calls as an opportunity to retain customers in violation of Section 13-514. The conduct of Ameritech representatives during three way calls was clearly in the nature of marketing." (*Id.*, pp. 10-11)

(B) The conduct of Ameritech during three way calls "impeded the ability of carriers" like MCI WorldCom to "fairly and efficiently compete for local toll customers in Illinois. The cumulative effect of the conduct was to make switching to a competitive carrier via a three-way call an unpleasant and difficult experience." Ameritech's conduct was to the "detriment of competition in the intraMSA market" and was contrary to the *PIC Protection Marketing Order* and Section 13-514. (*Id.*, p. 11)

(C) The Commission noted that ". . . the parties must cooperate to ensure that customers have the opportunity to switch their service as quickly as is practical." (*Id.*, p. 12)

(D) The Commission declined "at this time" to adopt the MCI WorldCom VRU (voice response unit) proposal. (*Id.*, p. 12). This proposal would have required Ameritech to establish a VRU or voice mail system ". . . with a specific script that would allow carriers and customer to participate on three way calls with the VRU or voice mail system and leave a recorded message with only that information which is necessary to enable Ameritech to implement the customer request to change his or her intraMSA and/or interMSA service provider." (*Id.*, p. 3)

(E) The Commission ruled that during three way calls that "Ameritech representatives may only determine the switching customers' names,

telephone numbers and willingness to switch intraMSA and/or interMSA services to another carrier. There is simply nothing more for the Ameritech representatives to do but make the PIC change. The PIC change must be made within 24 hours thereafter." (*Id.*, p. 12)

(F) The concurring opinion of Commissioner Ruth Kretschmer noted that while she agreed with the finding that Ameritech had knowingly impeded competition, that the order regarding three way calls did not go far enough and that as a result ". . . the opportunity for customers to change carrier with the least possible confusion is hindered and the opportunity for true competition in the industry is further delayed." (*Id.*, *concurring opinion*, p. 2).

As set forth in the present complaint, since the *Three-Way Calling* case, Illinois consumers with PIC Protection who have wanted to change their interMSA and/or intraMSA carrier continue to experience great difficulties and many are denied their carrier of choice . For example, in January and February of 2001, approximately 28% of the PIC change orders submitted by MCI WorldCom to Ameritech in Illinois -- approximately 35,671 MCI WorldCom orders -- were rejected due to PIC Protection. During 2000, more than 330,000 of MCI WorldCom's PIC change orders for Illinois consumers were rejected because of PIC Protection. Despite efforts such as attempting to re-contact the customer so as to participate in three-way calls with Ameritech, about 50% of these orders which have been rejected because of PIC Protection are never successfully completed and the customer does not obtain his or her chosen intraMSA and/or interMSA carrier. (Complaint, par. 15).

It is important to note that the extraordinarily high number of MCI WorldCom orders rejected because of PIC Protection is unique to Ameritech. In fact, when the reject numbers for the Ameritech states are removed, the national average for MCI WorldCom orders rejected because of PIC Protection is approximately 9%.

As the Commission considers this case, it is important to understand the current process

to change a customer's preferred interMSA or intraMSA carrier, particularly for those customers with PIC Protection. When MCI WorldCom sells either interMSA or intraMSA service to residential customers in Illinois, MCI WorldCom uses independent third-party verification ("TPV") to confirm that the customer does indeed wish to switch his or her intraMSA and/or interMSA service to MCI WorldCom. All residential orders which Ameritech rejected due to PIC Protection since the Commission's order in the *Three Way Calling* case have been subject to TPV. (Complaint, pars. 16-17).

Ameritech does not provide MCI WorldCom with information regarding whether a PIC Protection is in place on a customer's account, and most customer's either do not know or do not remember whether they have opted for PIC Protection. As a result, MCI WorldCom does not know that a valid sale will not be processed until some time after the transaction with the customer has been completed and the order is rejected by Ameritech. (Complaint, par. 18).

Once an order has been rejected due to PIC Protection, MCI WorldCom must again contact the customer and convince the customer to undertake one of a limited number of burdensome actions necessary to lift the freeze. Under Ameritech's restrictive procedures, in order to lift a freeze, a customer must do one of the following: (1) contact an Ameritech service representative, (2) participate in a three-way call with Ameritech and the requesting carrier, (3) access an automated system using an 800 number, or (3) write a letter to Ameritech. Ameritech does not permit any other method of contact for lifting a freeze. (Complaint, pars. 19-20).

Each of these Ameritech methods has major shortcomings, including the fact that each requires the customer to take a secondary action, often several days after the customer believes that he has completed his transaction. Moreover, three-way calls must be made during normal Ameritech business hours, which are not necessarily the same as MCI WorldCom's sales hours.

Ameritech's procedures are thus burdensome to customers and have a chilling effect on competition. Taken together, Ameritech does not presently offer the customers sufficient methods to change intraMSA and/or interMSA service providers where the customer has PIC Protection on the line. (Complaint, par. 21).

In an effort to reduce consumer burdens while preserving the legitimate protections provided by PIC Protection, MCI WorldCom has developed its EA proposal. EA would allow the consumer to create an electronic voice recording of his or her oral authorization. This electronically signed voice recording could then confirm the customer's choice to lift any applicable PIC Protection and to change the intraMSA and/or interMSA carriers. At the consumer's request, an independent third party will make this electronically signed authorization available to the consumer's local exchange carrier, as the executing carrier, in the form of a ".wav" file. This ".wav" file will provide the local exchange carrier with the customer's expressed and specific authorization to lift his or her PIC Protection for the sole purpose of executing the customer's requested carrier change. The ".wav" file can be simply transferred to the local exchange carrier in a number of ways, including via access to a secured web site. This ".wav" file can be opened and reviewed through commonly available software. (Complaint, par. 22).

Ameritech has refused to consider the EA proposal. The Complaint shows that Ameritech's position of refusing to implement EA favors itself over competitors in the intraMSA market and thus is discriminatory. Ameritech's position of refusing to implement EA, if unchanged, would favor Ameritech over potential competitors in the interMSA market. By refusing to implement EA, Ameritech has the advantage of allowing the customer to contact it in a single telephone call to both lift a PIC Protection and to change a PIC which no interexchange

competitor is able to do. In the intraMSA market, where Ameritech has a large majority of such customers, this substantially hinders the ability of customers with PIC Protection to have their choice to change carriers to a competitor implemented. In the interMSA market, which Ameritech will presumably once again seek to enter in Illinois, Ameritech's policy would similarly give Ameritech an unfair anti-competitive advantage by allowing customers to choose Ameritech and lift or suspend PIC Protection on one call, a process which under Ameritech's present policy no other interexchange carrier in Illinois can match. (Complaint, pars. 23-25).

Ameritech's activities constitute an abuse of its position as the incumbent monopoly provider of intraMSA and local exchange services. Ameritech's conduct of refusing to implement EA results in a large number of consumers in Illinois being denied their chosen intraMSA and interMSA carrier and further imposes on MCI WorldCom the unnecessary expense associated with contacting customers – for the second time – in order to participate in three-way calls. This time-consuming and often unsuccessful process leaves substantial Illinois consumers without their desired intraMSA and/or interMSA carrier. This also results in a loss of revenue to MCI WorldCom for the delays in provisioning service and the further loss of revenue for the 50% of the orders that are never provisioned. (Complaint, par. 27).

AMERITECH IS VIOLATING NUMEROUS STATE LAWS

Ameritech's Motion generally alleges at page 2 that there are no good faith allegations that Ameritech has violated any state statute or rule or order of the Commission. While Ameritech's Motion raises other issues (which will be addressed below), it is important to recognize the numerous violations of state law set forth in the complaint which Ameritech has ignored in its Motion.

Ameritech's current implementation of its PIC Protection program and its refusal to to implement MCI WorldCom's EA method constitutes anti-competitive, discriminatory or

otherwise illegal behavior that knowingly impedes the development of competition in the intraMSA and interMSA markets in Illinois in violation of numerous sections of the PUA and prior Commission orders calling for Commission action in this matter as set forth in paragraph 28 of the complaint. The following sections set forth the specific allegations in paragraph 28 along with a brief explanation or example showing how Ameritech is violating the applicable Illinois statute or prior Commission orders.

A. A ". . . telecommunications carrier shall not knowingly impede the development of competition in any telecommunications service market." 220 ILCS 5/13-514

Ameritech is knowingly impeding the development of competition, among other reasons, by failing to take appropriate action to give customers with PIC Protection their chosen intraMSA and/or interMSA carrier. Denying customer choice impedes competition. If Ameritech were to adopt the EA proposal, customer choice would be accomplished while still preserving the protections of PIC freezes.

B. A telecommunications carrier is prohibited from "unreasonably refusing or delaying access by any person to another telecommunications carrier." 220 ILCS 5/13-514(5).

Ameritech is acting unreasonably in refusing to implement EA. By refusing to implement EA, approximately 50% of the customers with PIC Protection do not have their preferred carrier changes processed. For the 50% which are eventually processed, there are significant delays which would not be present if EA were adopted. The delays and effective refusal to allow customers to change carriers could be solved by adopting MCI WorldCom's EA proposal. Yet, Ameritech refuses to do so. It admits, however, that if ordered to do so it would implement the EA proposal. (Motion, page 5). This, among other reasons, shows that Ameritech is unreasonably refusing or delaying access by any person to another telecommunications carrier.

C. A telecommunications carrier is prohibited from "unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers." 220 ILCS 5/13-514(6).

It is clear from the allegations in the complaint and the comments above that Ameritech is acting unreasonably in a manner which is having a substantial adverse effect on the ability of MCI WorldCom to provide service to its customers. For example, last year alone over 150,000 customers in Illinois chose MCI WorldCom, but were effectively denied their choice by Ameritech because of the manner in which Ameritech administered its PIC Protection program. Ameritech's implementation of PIC Protection is also discriminatory (as set forth in par. 25 of the complaint) and the discriminatory conduct is clearly not reasonable. Ameritech refuses to make corrective changes to its PIC Protection program in the face of MCI WorldCom's evidence that so many customers are being denied service from their chosen carrier.

D. "Whenever the Commission after a hearing had upon its own motion or upon complaint, shall find that the rules, regulations [or] practices...of any public utility...are unjust, unreasonable...improper, inadequate or insufficient, the Commission shall determine the just, reasonable...proper, adequate or sufficient rules, regulations [or] practices to be observed...enforced or employed and it shall fix the same by its order, decision, rule or regulation. The Commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished by any public utility." 220 ILCS 5/8-501.

The manner in which Ameritech has administered its PIC Protection program has been patently unjust, unjust, unreasonable, improper, inadequate or insufficient. It is discriminatory as it favors itself over its competitors as set forth in the complaint in par. 25. Ameritech effectively denies a large number of customers from obtaining their chosen carrier, thus impeding customer choice and impairing competition. The Commission is thus mandated by state statute to correct the situation.

E. "Whenever the Commission after a hearing had upon its own motion or upon complaint, shall find that the...classifications, or any of them...observed by any public utility for any service or product or commodity, or in connection therewith, or that the rules, regulations...or practices of any of them, affecting such...classifications, or any of them, are unjust, unreasonable, discriminatory or preferential, or in any way in violation of the provisions of law, or that such...classifications are insufficient, the Commission shall determine the just, reasonable or sufficient...classifications, rules, regulations...or practices to be thereafter observed and in force, and shall fix the same by order as hereinafter provided. The Commission shall have power, upon a hearing, had upon its own motion or upon complaint, to investigate a single...classification, rule, regulation...or practice, or any number thereof, or the entire schedule or schedules of...classifications, rules, regulations...and practices or any thereof of any public utility, and to establish new...classifications, rules, regulations...or practices or schedule or schedules, in lieu thereof." 220 ILCS 5/9-250.

For reasons similar to that set forth in section D, above, the Commission is similarly empowered to correct the Ameritech practices relating to PIC Protection.

F. "The Legislature has established a pro-competitive telecommunications policy for Illinois. 'It is in the immediate interest of the People of the State of Illinois for the State to exercise its rights within the framework of federal telecommunications policy to ensure that the economic benefits of competition in all telecommunications service markets are realized as effectively as possible.' 220 ILCS 5/13-102(e). Section 13-103 expresses that policy as well (mandating, in subsection (f) 'the implementation and enforcement of policies that promote effective and sustained competition in all telecommunications services markets'). 220 ILCS 5/13-103. Section 13-514 . . . is simply a further expression of that policy. In view of that clear public policy, it follows that actions inimical to competition can be unjust and unreasonable under the Public Utilities Act." *Citizens Utility Board v. Illinois Bell Telephone Company*, Docket No. 00-0043 (2001 Ill. PUC LEXIS 124), January 23, 2001, at p. 7, note 11. "Sections 13-102, 13-103 and 13-514 unambiguously direct us to promote effective competition. Consequently, actions contrary to that policy can be unjust, unreasonable and improper within the meaning of Sections 8-501 and 9-250." *Id.*, p. 9.

For reasons similar to that set forth in sections A through E, above, the Commission is similarly empowered to correct the Ameritech practices relating to PIC Protection by its interpretation of its statutory authority as set forth in *Citizens Utility Board v. Illinois Bell Telephone Company*.

G. "Nondiscrimination in the provision of noncompetitive services. A telecommunications carrier that offers both noncompetitive and competitive services shall offer the noncompetitive services under the same rates, terms, and conditions without unreasonable discrimination to all persons, including all telecommunications carriers and competitors. A telecommunications carrier that offers a noncompetitive service together with any optional feature or functionality shall offer the noncompetitive service together with each optional feature or functionality under the same rates, terms, and conditions without unreasonable discrimination to all persons, including all telecommunications carriers and competitors." 220 ILCS 5/13-505.2

The discriminatory conduct of Ameritech was set forth in the complaint and above. See, for example, paragraph 25 of the complaint showing how Ameritech favors itself over other carriers with respect to its application of the PIC Protection program.

H. Ameritech's conduct violates the directive of the Commission in the *Three-Way Calling* case that ". . . the parties cooperate to ensure that customers have the opportunity to switch their service as quickly as is practical." (*Three-Way Calling Order*, page 12).

As set forth in the complaint, despite repeated requests Ameritech refused to meet with MCI WorldCom to discuss the EA proposal and refused to participate in mediation with the assistance of the Commission's Consumer Service Division to cooperate to ensure that customers have the opportunity to switch their service as quickly as is practicable. Implementing EA is the solution. Ameritech has refused to even meet to discuss the solution.

Ameritech's motion ignores all of these violations of Illinois law set forth in the complaint. Instead, Ameritech appears to rest on the Commission's decision in the *Three-Way Calling* case where the Commission decided not to order Ameritech "at this time" to implement the VRU with voice recording. This portion of the Commission's order in *Three-Way Calling* case does not bar the present complaint. First, the Commission did not provide any reasoning for its temporary denial of a requirement that Ameritech provide the recording services through

Ameritech's VRU. Second, there are different facts in the present proceeding. The VRU with audio recording would have been provisioned and paid for by Ameritech, and Ameritech resisted funding those efforts. The recording capabilities of EA, on the other hand, will be funded by MCI WorldCom and MCI WorldCom will bear the bulk of the expenses associated with EA. Third, the technology is more advanced and now allows for electronic transmission of the customer's authorization to Ameritech in .wav files. Fourth, the evidence in the present proceeding will show the substantial numbers of customers with PIC Protection who are being faced with delays in obtaining their chosen carrier or are being denied their chosen carrier due to the manner in which Ameritech is administering its PIC Protection program.

Also a study by Data Development Corporation, which will be presented in MCI WorldCom's direct testimony in this matter, shows that most Ameritech customers with PIC Protection are completely unaware that they have PIC Protection or have forgotten about the PIC Protection. This study will further show that most consumers with PIC Protection assume that the present method of verification via TPV (third-party verification) is sufficient to confirm their choice for changing carriers. Most of those Ameritech customers with PIC Protection favor EA over the present methods.

EA solves these problems. The magnitude of the problem, and the appropriate EA solution, were not at issue in the *Three Way Calling* case. Accordingly, it is clear that Ameritech's present implementation of PIC Protection and its refusal to implement EA is in violation of numerous provisions of the Illinois PUA. As set forth in MCI WorldCom's complaint, these violations require Commission action.

THE EA PROPOSAL IS CONSISTENT WITH FEDERAL LAW AND ALLOWS AMERITECH THE OPPORTUNITY TO VERIFY CUSTOMER INFORMATION AND CUSTOMER INTENT

The MCI WorldCom EA proposal is consistent with federal law. Ameritech argues at page 3 of its Motion that the FCC requires that a customer's decision to lift a PIC freeze needs to be conveyed directly by the customer to the LEC administering the PIC freeze, but wrongly implies that the MCI WorldCom EA proposal does not allow for this direct communication. Ameritech also incorrectly argues that the FCC only allows for two methods of lifting the PIC Freeze, namely the customer's signed, written authorization and the customer's oral authorization and cites an outdated FCC regulation.

The complaint in the matter at hand directly states that under MCI WorldCom's EA proposal the customer would be sending the authorization directly to Ameritech via the independent company which recorded the customer's authorization. (See, for example, Attachment "C" to the Complaint, MCI WorldCom letter of January 19, 2001).[2] Under the EA proposal, consumers communicate to the local exchange carrier itself, via an electronic means, their intent to lift a freeze, as is consistent with the federal rules. Neither the acquiring carrier nor the third party is communicating the consumer's desire or submitting an order to lift the freeze on behalf of the consumer. In fact, the carrier does not send anything to the local exchange carrier during this process. In short, the local exchange carrier is receiving the customer's actual authorization, whereby the customer directly authorizes the local exchange carrier to lift the freeze and switch his or her carrier. The third party's role in the process is to provide consumers

[2] This letter states that under the EA proposal, WorldCom would not be involved in the creation or transmission of the electronic authorizations. The .wav files would be created at the customer's request to a third-party representative. At that point, the third-party representative would be acting on behalf of the customer, and would merely provide a medium for the customer to record his or her oral electronic authorization and a mechanism for transporting it. In this way, the process is similar to when a customer goes to the post office, secures a post card, writes out

an electronic means to communicate their intent to their local exchange carrier. The local exchange carrier receives the authorization itself, it does not have to rely on the veracity of another party as to the existence of the authorization. Therefore the intended protection of a freeze is preserved.

Furthermore, the FCC has already ruled that a "*de facto*" PIC freeze occurs when a local carrier verifies the information about the customer's desire to change its carrier.[3] EA would still allow Ameritech and its customers to have this "*de facto*" PIC Protection as Ameritech could verify the information about the customer's desire to change carriers.

No customer protection is lost because EA is used as opposed to other approved methods. Ameritech's Motion at pages 3-4 raises concerns in this regard, namely that three-way calling or LOAs allow it to "confirm the customer's identity and intentions" and that somehow EA would not provide similar characteristics. Ameritech is wrong. Ameritech has already admitted that audio recordings are superior to LOAs. See, Ameritech Ex Parte letter to the FCC dated May 13, 1998 in CC Docket 94-129, and attached as Attachment "A", which states in pertinent part:

> Indeed, recorded oral authorization could be a more reliable verification method than an LOA[4], since it precludes the possibility of forgery. . . . These recordings could also ensure that the transaction was described accurately and in non-misleading fashion to the consumer.

Ameritech can thus use these admittedly reliable recordings to perform whatever verification is appropriate in order to lift the PIC protection and to change the customer's PIC to the customer's chosen PIC, and this is "more reliable" than LOAs.

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an LOA, and then asks the post office to deliver it.

[3] Second Report and Further Notice of Proposed Rulemaking, *In the matter of Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996*, FCC 98-334, CC Docket No. 94-129, ¶ 100 (Dec. 23, 1998) (hereinafter, the "*Section 258 Order*").

[4] An LOA is a letter of authority, a document signed by the subscriber authorizing the change in carriers or authorizing the lifting of the PIC Protection.

The content of the EA would be identical to the information Ameritech is entitled to receive as part of a three-way call. The Commission has already severely restricted the extent of Ameritech's participation in three-way calls. The Commission ruled that during three way calls that "Ameritech representatives may only determine the switching customers' names, telephone numbers and willingness to switch intraMSA and/or interMSA services to another carrier. There is simply nothing more for the Ameritech representatives to do but make the PIC change. The PIC change must be made within 24 hours thereafter." (*Three-Way Calling Order,* p. 12). All of this information will be provided as part of EA.

In its Motion at page 3, Ameritech states that it ". . . cannot ask a recorded message for the verifying information." But, with proper scripting the customer will be prompted by the independent third party to provide the appropriate verifying information on the recording as part of EA. Accordingly, the EA proposal allows Ameritech to verify the identify and intent of the customer and preserves the intended protection of the PIC freeze while at the same time allowing customers to have their chosen carrier. The information which Ameritech will receive would be identical to what Ameritech receives during three-way calls. There is no lesser protection. The protection is the same.

Also, EA would contain in electronic format all of the information required for written authorization. The FCC rules clearly allow for written authorization to lift PIC Protection. All appropriate protections are preserved with EA.

Contrary to Ameritech's assertions or implications in its Motion at page 2, the FCC has not limited the subscriber to only two methods of lifting the PIC Freeze. Other methods are allowed by the FCC. In fact, the FCC was quite explicit that in addition to oral authorization (whether through a three way call or otherwise), and written authorization that other methods

were acceptable and stated as follows:

> We decline to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, we encourage parties to develop new means of accurately confirming a subscriber's identity and intent to lift a preferred carrier freeze, in addition to offering written and oral authorization to lift preferred carrier freezes. Other methods should be secure, yet impose only the minimal burdens necessary on subscribers who wish to lift a preferred carrier freeze.[5]

The FCC has also affirmatively mentioned electronically signed authorization as one of the methods which local carrier must accept in order to lift PIC freezes. The FCC rules now specifically include electronically signed authorization and state, in pertinent part, as follows:

> (e) Procedures for lifting preferred carrier freezes. All local exchange carriers who offer preferred carrier freezes must, at a minimum, offer subscribers the following procedures for lifting a preferred carrier freeze:
>
> > (1) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's written or electronically signed authorization stating his or her intent to lift a preferred carrier freeze; and
> >
> > (2) A local exchange carrier administering a preferred carrier freeze must accept a subscriber's oral authorization stating her or his intent to lift a preferred carrier freeze and must offer a mechanism that allows a submitting carrier to conduct a three-way conference call with the carrier administering the freeze and the subscriber in order to lift a freeze. When engaged in oral authorization to lift a preferred carrier freeze, the carrier administering the freeze shall confirm appropriate verification data (e.g., the subscriber's date of birth or social security number) and the subscriber's intent to lift the particular freeze. [6]

Of note is that in its Answer to paragraph 26 of the complaint, Ameritech admits that this is the FCC rule. Yet, in its Motion at page 2, Ameritech cites a prior version of this rule, before the rule was amended to specifically provide for electronically signed authorizations.

Accordingly, the EA proposal is consistent with current federal law and allows

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[5] *Section 258 Order,* par. 130.

[6] 47 CFR § 64.1190(e). See also, 66 FR 12877 (March 1, 2001) and 66 FR 17083 (March 29,

Ameritech the opportunity to verify customer information and intent. It provides protection to the subscriber while also allowing the subscriber to change to his or her selected carrier.

THE ILLINOIS COMMISSION IS BOTH EMPOWERED AND REQUIRED TO RULE ON WHETHER THE EA PROPOSAL IS APPROPRIATE AND MUST PROCEED WITH THIS COMPLAINT CASE INSTEAD OF A RULEMAKING PROCEEDING

The Illinois Commission is empowered by both FCC rulings and state law to rule on whether the MCI WorldCom EA proposal is appropriate, and the Commission must proceed with the present complaint case as opposed to waiting for a future rule-making proceeding. Also, while Ameritech argues that the FCC is the proper forum, the FCC has explicitly allowed if not encouraged the states to consider complaints on this issue.

The *Section 258 Order* provides numerous strong statements showing that states have the ability to allow for further options to verify a customer's choice of carrier.

> We decline to preempt generally state regulation of carrier changes. The states and the Commission have a long history of working together to combat slamming, and we conclude that state involvement is of greater importance than ever before. We conclude that the Commission must work hand-in-hand with the states for the common purpose of eliminating slamming. In the context of this partnership, we expect the states and the Commission to continue sharing information about slamming and to develop together new and creative solutions to combat slamming. We conclude that, although a state must accept the same verification procedures as prescribed by the Commission, a state may accept additional verification procedures for changes to intrastate service if such state concludes that such action is necessary based on its local experience. . . . In other words, absent a specific preemption determination, a state may provide carriers with further options for verifying carrier changes to intrastate service, in addition to the Commission's three verification options, if the state feels that such procedures would promote consumer protection and/or competition in that state's particular region. . . . States must, however, write and interpret their statutes and regulations in a manner that is consistent with our rules and orders, as well as section 258. For example, a state may not accept the welcome package as an additional verification method because we have determined that the welcome package fails to protect consumers.[7]

2001).

This FCC ruling, along with that set forth at page 16, *supra*, from Par. 130 of the *Section 258 Order*, is a direct invitation for a state like Illinois, with its strong public policy on promoting competition, to take appropriate action such as implementation of other methods of lifting PIC Protection. It has been shown that in Illinois, without EA, competition is harmed and customers are being denied their chosen carrier in large numbers and that Ameritech is acting in a discriminatory manner.

The *Section 258 Order*, consistent with 47 U.S.C. Sec. 258(a), also authorizes the states to enforce the FCC verification rules with respect to intrastate services.

> Section 258 expressly grants to the states authority to enforce the [FCC]'s verification procedure rules with respect to intrastate services. A state therefore may commence proceedings against a carrier for violation of the [FCC]'s rules governing changes to a subscriber's intrastate service. [8]

The *Section 258 Order* also provides numerous statements showing that parties may pursue *complaints* with state commerce commissions to resolve differences on what type of conduct is appropriate with respect to verifying carriers and with respect to PIC protection.

> . . . any carrier that imposes unreasonable delays in executing carrier changes, both for itself and others, will be in violation of our verification procedures or acting unreasonably in violation of section 201(b), even if it is not acting in violation of a non-discrimination requirement. A party that believes that a carrier is delaying execution of carrier changes in violation of any of these statutory or regulatory provisions should file a complaint in the appropriate forum. [FCC footnote:] For example, a party may file a complaint with the appropriate state commission . . . .[9]

> We encourage parties to bring to our attention, or to the attention of the appropriate state commissions, instances where it appears that the intended effect of a carrier's freeze program is to shield that carrier's customers from any developing competition.[10]

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[7] *Section 258 Order*, pars. 87 – 89.
[8] *Section 258 Order*, par. 90.
[9] *Section 258 Order*, par. 103, and note 327.
[10] *Section 258 Order*, par. 135.

The FCC has even recognized (and followed) the lead of Illinois in setting rules for conduct during three way calls to lift PIC Protection. In Par. 132 (and note 411) of the *Section 258 Order* the FCC recognized this Commission's *Three Way Calling* complaint case and noted that the conduct of Ameritech depicted in that case in trying to dissuade customers from changing carriers could also violate the "just and reasonable" provisions of 47 U.S.C. Sec. 201(b), and ruled that "LECs that receive requests to lift a preferred carrier freeze must act in a neutral and nondiscriminatory manner."[11] As shown above, Ameritech's implementation of PIC Protection is discriminatory and favors itself over its competitors. It is not neutral and it is not non-discriminatory.

Ameritech suggests that MCI WorldCom already has sought relief from the FCC in the form of an ex parte filing. (See, Motion, page 5). As the text of the ex parte makes clear, however, MCI WorldCom has alerted the FCC to the fact that it was pursuing this issue with the Illinois Commission Staff. (See, page 8 of the attachment to the ex parte). The ex parte is fundamentally just an informational presentation to certain FCC staff and certainly does not amount to the filing of a complaint with the FCC.

The Commission must reject Ameritech's argument at page 5 of its Motion that the Commission should defer MCI WorldCom's complaint to a rulemaking proceeding. First, as shown above, MCI WorldCom's complaint alleges numerous violations of provisions of Illinois law. MCI WorldCom is entitled to produce evidence on those violations and is entitled to a remedy if Ameritech is found to be in violation of Illinois law, and should not have to wait for a future rulemaking for its remedy.

Second, historically the Commission has addressed PIC Protection issues through complaint cases, such as the *PIC Protection Marketing Order* complaint case and the *Three Way*

[11] *Section 258 Order*, par. 132.

Calling case. This clear precedent shows that complaint cases are the tried and true method in Illinois of addressing actual complaints between carriers as to Ameritech's conduct with respect to its PIC Protection program, and fashioning remedies to address those complaints. Indeed, the Commission's requirement that PIC Protection be lifted via three-way calls was imposed on Ameritech alone in response to the complaint of MCI WorldCom and other carriers.

Third, Ameritech has failed to identify any other carrier asking for any additional method, other than EA, for lifting PIC Protection. If Ameritech had a serious concern with receiving numerous requests from a multitude of carriers, it already would have filed for a rulemaking. Instead, it has done nothing. This strongly suggests that Ameritech is not presently being faced with the prospect of more than one complaint on this issue. Ameritech has not presented any evidence to the contrary.

Finally, other equities dictate that the present matter remain a complaint case. For example, it is the public policy of the Commission to have disputes between carriers resolved ". . . as swiftly as is possible in keeping with the other goals of the hearing process." (83 Illinois Administrative Code, Ch. I, Section 200.25). A rulemaking proceeding could well last over one year. A complaint proceeding under Section 13-515 is substantially shorter and will resolve the present dispute according to the public policy of this Commission.

Accordingly, the Illinois Commission is empowered to rule on whether the EA proposal is appropriate and must proceed with this complaint case.

CONCLUSION

For the above reasons, Ameritech's Motion with alleges that the complaint is frivolous, must be denied in total.

Respectfully submitted,

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Dated: June 14, 2001

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

MCI WorldCom Communications, Inc.	:	
	:	
	:	
vs.	:	Docket No. 01-0412
	:	
Illinois Bell Telephone Company, d/b/a Ameritech Illinois	:	
	:	
Complaint pursuant to Section 13-514 and 13-515 and other sections of the Illinois Public Utilities Act	:	

VERIFICATION

James Denniston, being first duly sworn, deposes and states that he is an attorney for MCI WorldCom Communications, Inc., that he has read the Response to the Motion to Dismiss in this matter and knows the contents thereof, and that the statements therein contained are true, to the best of his knowledge, information and belief.

James R. Denniston

SUBSCRIBED AND SWORN
to this 14th day of June, 2001

Notary Public

"OFFICIAL SEAL"
DOROTHY E. HAUSER
Notary Public, State of Illinois
My Commission Expires 07/28/01

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing Response of MCI WorldCom to Motion to Dismiss attached was filed via overnight delivery mailing and served upon all parties via e-mail this 14th day of June, 2001, with a hard copy served via first class letter mailed on this date.

James R. Denniston

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